

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.4694 OF 2002

ORDER:

Petitioner-Andhra Pradesh State Road Transport Corporation (for short 'the Corporation') filed this Writ Petition being aggrieved by the award dated 23.08.2001 passed by the Labour Court in I.D.No.146/98 and published in G.O.Rt.No.2383 dated 17.09.2001 directing the petitioner to issue alternative job of cleaner without back wages and attendant benefits, and to quash the same being arbitrary and illegal.

Brief facts of the case are that the second respondent-workman was appointed as a Cleaner in the Corporation in the year 1978. Thereafter, he was promoted as a Driver and posted at Kalyanadurg Depot. While he was working as such, a charge sheet dated 02.12.1989 was issued to the workman. Workman submitted his explanation denying the charges. Not being satisfied with the explanation submitted by the petitioner for the alleged charge of insubordination, an enquiry was conducted placing the workman under suspension. The Enquiry Officer submitted his report. Based on the same and considering the evidence on record, the Disciplinary Authority has provisionally concluded that the charges are proved. A show cause notice of removal was issued to the workman, to which he submitted his explanation. The Disciplinary Authority after carefully examining the Enquiry Officer's report along with representation of the workman, on 30.03.1990 passed an order removing the workman from service. Aggrieved by such removal, the workman preferred an appeal before the Appellate Authority. The Appellate Authority, on humanitarian grounds, modified the order of removal to that of

reinstatement into service by order dated 17.10.1990 and directed to post the workman in Kadiri Depot with a condition that the workman shall be subjected to medical test. Accordingly, the workman was reinstated into service and sent for medical examination. Basing on the medical report, the Depot Manager, Kadiri, issued orders dated 26.11.1990 holding that the workman was unfit to hold the post of driver and he was placed under forced leave in accordance with Regulations and the workman having suffering with colour blindness is unfit to drive the vehicle. Questioning the same, the workman filed W.P.No.23282 of 1999 before this Court seeking to direct the respondents to consider his case for providing alternative employment for the post of Cleaner as per Circular No.PD/144/1989 dated 06.11.1989 issued by the third respondent and consequently to direct the respondents therein to reinstate the workman as a Cleaner in the Corporation with all monetary benefits from 1992. The said Writ Petition was dismissed by this Court on 10.11.1999 on the ground of laches. However, the third respondent therein i.e. the Vice Chairman & Managing Director, was directed to consider the representation alleged to have been filed by the workman. Thereafter, when his representation was not considered, the workman raised I.D.No.146/98 under Section 2-A (2) of the Industrial Disputes Act (for short 'I.D.Act') before the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labnour Court, Anantapuram. The Labour Court, after considering the evidence before it, by exercising power under Section 11-A of the I.D.Act, directed the petitioner-Corporation to provide alternative job of Cleaner to the workman without back wages or any other attendant benefits.

Being aggrieved by the same, the present writ petition came to be filed.

Sri Aravala Rama Rao, learned Standing Counsel for the Corporation, would contend that the workman was removed from service, after conducting due enquiry for the proved charge of insubordination in discharging his duties as a Driver. On appeal, the workman was reinstated into service subject to medical fitness and he was found to be medically unfit. Immediately thereafter, he has not submitted any representation, but belatedly he filed a Writ Petition and the same was dismissed on 10.11.1999, however, a direction was given to the third respondent to consider the case of the workman. When the case of the workman was rejected, the workman raised I.D.No.146/98 against the petitioner seeking reinstatement with continuity of service, full back wages and all other attendant benefits by setting aside the removal order. But, the removal order dated 30.03.1990 was merged with the order dated 17.10.1990 passed by the appellate authority whereby the appellate authority allowed the appeal and directed reinstatement of the petitioner subject to medical fitness. In pursuance thereof, the workman was reinstated, however, based on the medical report, the workman was declared as unfit on the ground that he was suffering with colour blindness. Thereafter, the workman raised Industrial Dispute, which is not maintainable under Section 2-A (2) of the I.D. Act as neither discharge nor termination was inflicted on the workman. Hence, the Tribunal has no jurisdiction to pass the award in I.D.No.146/1998 directing the petitioner to provide alternative job of Cleaner to the workman. He would further contend that as per Rule 6A-5(b) of the Service Regulations of the Corporation, petitioner is only entitled for retrial benefits.

Per contra, Sri Devineni Vijay Kumar, learned senior counsel appearing for the petitioner, would contend that the workman was originally appointed as a Cleaner and later promoted as a Driver and posted at Kalayanadurgam Depot. A charge sheet was issued on 02.12.1989 alleging insubordination as the workman denied to perform the charted duty. Workman submitted an explanation stating that due to sickness he could not perform the duty and asked for leave, for which the allegation was made against him that he committed an act of insubordination. Without properly considering the explanation, an enquiry was ordered. Without therebeing any legal evidence in support of the Enquiry Officer's report, the workman was illegally terminated. However, the appellate authority passed order dated 17.10.1990 ordering reinstatement of the workman subject to medical examination. On medical examination, the workman found to be suffering from colour blindness. While so, the petitioner-Corporation ought to have considered the case of the workman for providing alternative employment as per Circular No.PD/144/1989 dated 06.11.1989 for which the workman is entitled to. When he was not provided with any alternative job, the workman approached this Court by filing W.P.No.23282 of 1999 and the same was dismissed by this Court based on the laches and directed the third respondent to consider the representation of the workman. When the third respondent has not considered his representation, the workman approached the Labour Court by raising I.D.No.146/1999 seeking reinstatement with continuity of service and back wages and other benefits. However, the Labour Court exercising power under Section 11-A of the I.D.Act set aside the termination order directing the respondents to provide an alternative job as a Cleaner

without back wages and without any other benefits. There is no error of fact or error of law and the impugned award does not warrant interference of this Court. However, finally, he would submit that as the petitioner has already reached the age of superannuation, the petitioner-Corporation may be directed to settle the terminal benefits of the workman to which he is entitled to under Regulation 6A-5(A) of the Service Regulations of the Corporation for certain benefits.

In the facts and circumstances of the case and in considered view of this Court, since no termination/discharge order is available against the workman to challenge the same before the Labour Court, the Industrial Dispute raised by the workman in I.D.No.146/1998 is not maintainable under Section 2-A (2) of the I.D. Act. It is to be seen that the removal order passed against the workman was already modified by the appellate authority on 17.10.1990 ordering reinstatement of the workman into service subject to medical fitness, but, based on the medical examination report he was not kept on duty. However, the fact remains that the workman was not considered by the Corporation as per Regulation 6A-5(b) of the Service Regulations as per Circular No.144/89 dated 06.11.1989 for providing alternative employment. Regulation 6A-5(b) reads thus:

“In case of retirement of a Driver on medical grounds he may be extended all terminal benefits apart from an Ex-gratia payment equivalent to One and Half month’s emoluments (Pay+DA) last drawn, for each completed year of service or the monthly emoluments at the time of retirement on medical grounds multiplied by the balance months of service left before normal date of retirement whichever is less.

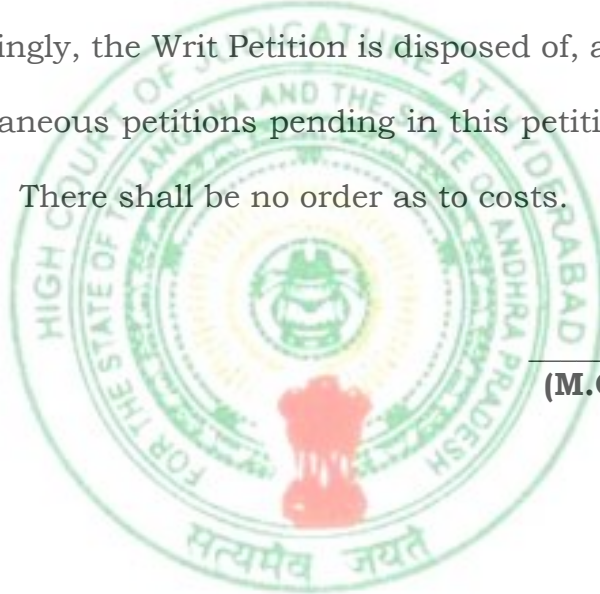
Service of more than 6 months shall be treated as one year.”

As the petitioner reached the age of superannuation, this Court feels it appropriate, in the interest of justice, to direct the petitioner-Corporation to consider the case of the petitioner for settlement of terminal benefits under Regulation 6A of the Service Regulations and pay the amounts. Accordingly, the impugned award of the Labour Court is modified. In view of the long pendency of the case, this Court directs the petitioner-Corporation to settle the benefits to the workman within a period of two months from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of, as stated supra.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

26.07.2018
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(M.GANGA RAO, J)